

## REMARKS

### Summary of Telephonic Interview with Examiner

The telephonic interview conducted between Examiner Chism and Cynthia Kanik on December 28, 2005 is gratefully acknowledged. During the interview, the withdrawal of allowable claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84 was discussed. The Examiner and Applicants agreed that such withdrawal was improper and would be withdrawn upon filing of the present response.

### Withdrawal of Claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84

Claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84 were withdrawn from consideration on the ground that

Applicants elected the species of SEQ ID NO:35 in the original restriction requirement. Here the search is renewed and extended to cover other species, since SEQ ID NO:35 was found free of the art. SEQ ID NO:35 is now indicated as allowable, however, prior art was found on the generic claims. Accordingly, all claims not reading on the species found in the prior art are withdrawn from consideration. Claims 16-18, 21 and 67-74 are found to read upon the prior art species. Therefore, claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84 are withdrawn from consideration.

Applicants respectfully traverse the withdrawal of these claims, as discussed during the aforementioned telephonic interview of December 28, 2005. Applicants assert that the withdrawal of the allowable claims is improper, as set forth in MPEP § 809.02(c). Applicants assert that under standard restriction practice, those species claims that are free of the prior art should be deemed allowable and not withdrawn.

Applicants further note that the prior art sequence disclosed by Decroly *et al.* (*J. Biol. Chem.* 269(16): 12240-1247) (hereinafter referred to as "Decroly") does not anticipate the claimed sequences. In particular, Applicants note that the sequence disclosed in the Decroly reference contains a  $\Psi[\text{CH}_2\text{NH}]$  peptide bond between the Arg and Phe residues, which is distinct from the sequences as claimed by the present invention. Indeed the present invention is directed to a peptide *consisting of* the claimed amino acid sequences, and thereby excludes the existence of a  $\Psi[\text{CH}_2\text{NH}]$  peptide bond between the natural arginine residue with an unaltered carboxyl group

and the amine group of the adjacent amino acid. Accordingly, the sequences taught by Decroly are distinct from the sequences of the present invention and therefore, fail to anticipate the pending claims.

Accordingly, Applicants assert that withdrawal of claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84 is improper, at least because standard restriction practice does not support such procedure and further because the prior art sequence fails to read on the claimed sequences as currently pending. Applicants respectfully request reconsideration of the withdrawal of claims 19-20, 22-25, 36, 41-42, 44-47, 55-66 and 75-84.

**Rejection of Claims 16-18, 21 and 67-74 under 35 U.S.C. § 102(b)**

Claims 16-18, 21 and 67-74 have been rejected as being anticipated by Decroly on the ground that

Decroly et al. disclose a sequence that anticipates the generic formula (SEQ ID NO:2). The sequence Dec-Arg-Lys-Arg-Arg- $\psi$ [CH<sub>2</sub>NH]-Phe-Leu-Gly-Phe-NH<sub>2</sub> teaches all the elements or portions of the Markush groups of the recited claims 16-18, 21 and 67-74.

Applicants respectfully disagree. As indicated above, Applicants assert that Decroly teaches a sequence having a  $\Psi$ [CH<sub>2</sub>NH] peptide bond between the Arg and Phe residues, which is distinct from the sequences as claimed by the present invention. As argued above, present invention is directed to a peptide *consisting of* the claimed amino acid sequences, and thereby excludes the possibility of a  $\Psi$ [CH<sub>2</sub>NH] peptide bond between the natural arginine residue with an unaltered carboxyl group and the amine group of the adjacent amino acid.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

**CONCLUSION**

Applicants believe that no additional fee is due with this submission. However, if the Applicants are in error, the Commissioner is authorized to charge any deficiency in the fees paid herewith, or credit any overpayment, to Deposit Account No. 12-0080, under Order No. CCI-014, from which the undersigned is authorized to withdraw.

If there are any remaining issues or if the Examiner believes that a telephone conversation with Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617) 227-7400.

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Respectfully submitted,

By   
Cynthia M. Soroos

Registration No.: 53,623

On Behalf of Cynthia L. Kanik, Ph.D.

Registration No.: 37,320

LAHIVE & COCKFIELD, LLP

28 State Street

Boston, Massachusetts 02109

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicant